



Massachusetts DIVORCE LAW & RELATED ISSUES

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***Air Force attorneys are prohibited from representing Air Force members and dependents in civilian courts. ***

Divorce Law

Massachusetts permits no-fault divorce based on irreconcilable breakdown of the marriage as well as at fault divorce. The divorce action may be contested or uncontested. There is no required waiting period for an uncontested mutually agreed upon no-fault divorce. There is a 180 day waiting period for a contested no-fault divorce. After the waiting period runs in a contested action or immediately upon filing for an uncontested mutually agreed upon divorce a hearing is scheduled before the judge for discuss the divorce petition and issues separation agreement.

Property Division – Massachusetts is an "equitable distribution" state, generally meaning that all marital property acquired during the marriage is subject to division. Statutory factors include: (1) length of marriage; (2) conduct of parties during the marriage; (3) age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and need of each; (4) opportunity for future acquisition of capital assets and income; (5) present and future needs of dependent children; and, (6) contribution of each to acquisition, preservation or appreciation of the property.

Which court will hear my case? - In Massachusetts, almost all divorces are heard in the Probate and Family Court of the county where you and your spouse last lived together. However, if neither you nor your spouse still lives in the county where you both lived together, the case will be heard in the county where either you or your spouse currently lives.

Who qualifies to file for divorce in Massachusetts? – To file for divorce in Massachusetts, you must satisfy any one of the following four conditions. The “grounds” are the legal justification for the divorce; these are discussed in more detail in Section II.

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1. Grounds for divorce occurred in Massachusetts; you live in Massachusetts and have a present intent to make Massachusetts your permanent home; or
2. Grounds for divorce occurred in Massachusetts; both spouses lived as in Massachusetts together as husband and wife; or
3. Grounds for divorce occurred outside Massachusetts; one spouse lived in Massachusetts when the grounds for divorce occurred; both spouses lived in Massachusetts as husband and wife before the grounds for divorce occurred; or
4. Grounds for divorce occurred outside Massachusetts; you have lived in Massachusetts for one year prior to filing for divorce.

How do I initiate a divorce action? – A divorce action is initiated by filing a complaint or petition with the clerk of the probate court. The complaint or petition states the grounds for divorce and what “relief” (i.e. child custody, alimony, child support) if any, is sought in addition to a divorce. The court has the authority to award child custody, child support, and alimony, and to divide property.

How long do divorce proceedings usually last? – The fastest divorce in Massachusetts may take 90 days if you and your spouse agree on all issues. On average, however, divorces take at least a year. Therefore, the law provides for temporary solutions for support, custody, restraining orders, and other domestic relations issues while the divorce is pending.

At what point are divorce proceedings considered final? – The judgment nisi and final divorce judgment are documents issued by the court that must be received before a divorce is considered final. The judgment nisi states that the divorce will become legal after 90 days, unless something happens to stop it. The purpose of this waiting period is to give the spouses one last chance to reconcile. The final divorce judgment is issued 90 days after the judgment nisi and states that you are legally divorced as of the date written on the final judgment.

What must I show in order to obtain a divorce in Massachusetts?

1. Adultery.
2. Impotency.
3. Utter desertion for at least one year.
4. Gross and confirmed habits of intoxication through use of alcohol or drugs.
5. Cruel and abusive treatment.
6. Non-Support.
7. Irretrievable breakdown of the marriage. (most common)

Can I be represented by an Air Force attorney? – This office and its attorneys are here to provide general guidance on divorce procedures only.

Should I hire a civilian attorney? – It depends; this office highly recommends that you seek civilian legal counsel if you are contemplating filing for divorce. While it is fairly easy to file for divorce *pro se* (representing yourself) in Massachusetts, an attorney could save you an enormous amount of time, money, and frustration in the long run, especially if you have children and/or significant assets.

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Child Custody

Which court(s) have authority to determine custody of my child? – Jurisdiction rules for custody differ from those for divorce. The Uniform Child Custody Jurisdiction Act (UCCJA) controls this issue; it authorizes a state court to determine custody if:

1. The state is the child's "home state;" or,
2. The child has a "significant connection" with the state; or,
3. An emergency necessitates an expedited custody determination.

How does the court determine child custody? – Child custody decisions are based on an assessment of the happiness and welfare of the child. When considering the happiness and welfare of the child, the court will consider whether or not the child's present or past living conditions adversely affected his physical, mental, moral, or emotional health.

What forms of custody is the court allowed to grant? – A parent may be granted legal custody or physical custody, both legal and physical custody, or no custody at all. These forms of custody may be shared by both parents or may be granted to only one parent (i.e. the mother may be granted sole legal custody, while the mother and father may be granted shared physical custody).

1. Sole legal custody. One parent has the sole right to make major decisions concerning the child's welfare, which includes educational, medical, emotional, moral, and religious matters.
2. Shared legal custody. Both parents share responsibility to make major decisions concerning the child's welfare, which includes educational, medical, emotional, moral, and religious matters.
3. Sole physical custody. The child resides with and is under the supervision of one parent. The other parent will be granted reasonable visitation unless the court determines that such visitation would not be in the best interests of the child.
4. Shared physical custody. The child has periods of residing with and being under the supervision of both parents. The child is assured frequent and continued contact with both parents.

Child Support

How will the court calculate child support? – Regardless of which parent is awarded custody, both have an ongoing duty to support their children. Usually, the non-custodial parent must pay between 25 and 33 percent of his or her gross weekly income in child support. The exact percentage depends on the amount of gross weekly income and the number of children to be supported.

Alimony and Division of Property

What is alimony? – Court-ordered spousal support. It may be awarded to either spouse.

How will the court divide property owned by the husband and wife? – All property, including jointly and separately owned property, may be divided. This means that property acquired before the date of marriage is treated the same as property acquired after the date of marriage. The court will order division of property in addition to or in lieu of alimony.

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Air Force Policies Regarding Support of Family Members

What is the amount of support required by the Air Force? – Members are expected to pay financial obligations in a proper and timely manner. Support of family members, direct or in-kind, is a primary element of an individual's personal financial obligations.

1. When there is a court order or written agreement for support, the member is expected:
 - a. To fulfill his or her obligations; and,
 - b. To engage the civil courts or the other parties to resolve issues concerning the validity of an order/agreement, when such an issue arises.
2. In the absence of court order or written agreement, a member is expected to provide an adequate amount of support, based on the dependents' needs and the member's ability to pay.

What are the consequences of failing to provide adequate support? – Failing to provide adequate support may subject the member to disciplinary or administrative action. However, the Air Force has no authority to unilaterally deduct money from a member's pay to ensure dependent support.

If a military member fails to make support payments, what procedures are available to enforce the payments? – There are two methods of involuntarily collecting military pay from a military member for child support and alimony: allotments and garnishment.

What are allotments? How do they work? – An allotment allows DFAS to automatically take money out of a member's paycheck. There are two types of allotments: voluntary and involuntary.

A voluntary allotment is completely within the member's control. Members may start and stop a voluntary allotment at any time.

If the member refuses to pay child support and there is a court order, the custodial parent can receive pay withheld involuntarily from a member through the use of an involuntary allotment.

This type of allotment is only available to satisfy child support, or child support coupled with alimony, but *not* alimony alone. The allotment may be initiated when child support and alimony payments are at least two months behind.

What is garnishment? How does it work? – If an Air Force member fails to make child support or alimony payments, a garnishment order allows the U.S. Government to seize up to 65% of the member's pay in order to satisfy the member's overdue obligation. The procedure to obtain a garnishment order is determined by state law. To initiate a garnishment, one must obtain a garnishment order from a state court with jurisdiction over the debtor.

What types of pay are subject to garnishment? – All military pay after taxes is subject to garnishment for family support; this includes base pay, special pay, reenlistment bonuses, incentive pay, accrued leave payments, and Survivor Benefit Plan payments (SBP). Military pay which is specifically excluded is: BAS, BAH, VHA, and family separation allowances.

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Uniformed Services Former Spouses' Protection Act (USFSPA)

What is USFSPA? – The USFSPA provides benefits to qualifying former spouses of military members. In particular, it allows state courts, if they desire, to treat military retired pay as marital property and divide it between the spouses. In some circumstances, a former spouse may receive a portion of the member's retired pay directly from the federal government. Generally speaking, direct payment to former spouses is possible if a final decree provides for child support, alimony, or a division of retired pay as property settlement.

What type of pay may a court divide between the spouses? – If a court apportions retired pay between the member and spouse, only disposable retired pay (DRP) may be divided. DRP is defined as the member's monthly retirement pay, minus certain deductions, such as income tax withholdings.

How long must the service member and spouse be married for the spouse to qualify for direct payments under USFSPA? – Direct payments are available to the former spouse only if the spouse was married to the active duty member for at least 10 years, and during the same 10 years the member performed retirement-creditable service. This is known as the 10/10 Rule. However, USFSPA limits DFAS to direct payments of 50% of retired pay.

Does the USFSPA limit the amount of retired pay that a state court can award to a former spouse as part of a division of marital property? – It depends on the state. Some state courts interpret USFSPA as placing an absolute 50% maximum on the retired pay that may be awarded to a former spouse. However, a majority of states say that awards may be up to 100%. Many states have not yet interpreted this provision.

Do former spouses maintain commissary and exchange privileges? – The Secretary of Defense is required to provide un-remarried former spouses the same benefits extended to surviving spouses of retired members. The law requires the former spouse to have been married to the member or former member for at least 20 years during which time the member performed at least 20 years of retirement-creditable service. Remarried former spouses do not have BX or commissary privileges.

Do former spouses retain medical benefits? – Former spouses are entitled to receive full medical benefits provided that (1) they are not remarried, (2) do not have medical coverage under an employer sponsored health plan, and (3) were married for at least 20 years, (4) during which the member or former member performed at least 20 years of retirement-creditable service. This is known as the 20/20/20 rule. If the marriage coincided with active duty for less than 20 years, but more than 15, the former spouse is still entitled to full medical benefits if the divorce occurred before 1 April 1985. This is known as the 20/20/15 rule. Former spouses who do not qualify will be entitled to continued health benefits coverage comparable to those provided former civilian employees of the Federal government under a plan implemented by the Secretary of

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Defense. The continued health care benefits coverage is a premium-based temporary transitional program.

Survivor Benefit Plan (SBP) and Former Spouses

What is an SBP? – The SBP is a government-subsidized annuity that provides continued financial security for dependents after the member dies and retirement pay stops. For retired members participating in SBP, premiums are deducted from their retired pay.

Can a former spouse qualify as an SBP beneficiary? – SBP beneficiaries may include a former spouse, provided he/she is un-remarried before age 55. The former spouse may be designated an SBP beneficiary by court order or by a voluntary, written agreement with the member. Once a member becomes SBP eligible and makes an election to provide an annuity for a specific eligible beneficiary, the election is usually irrevocable.

Spousal/Child Abuse

Under what circumstances are former spouses, who were victims of abuse by members, entitled to direct payment of retired pay? – Congress has recognized the plight of victims of spousal and child abuse and the hardship imposed on them by discharge of the member as a result of the abuse. Former spouses may be entitled to direct payment of retired pay even if the former member is no longer entitled to retired pay, IF:

1. A court order provides for the payment of an amount from the DRP of the member;
2. The member, after becoming eligible to be retired on the basis of years of service, has eligibility terminated as a result of misconduct involving abuse of a spouse or dependent child; and
3. The spouse was married to the member at the time of the abuse or is the parent of the dependent child who was the victim of the abuse.

Will a former spouse receive benefits even if the member has not become retirement eligible?

Spouses and children who do not qualify because the member has not met the minimum years necessary for retirement eligibility may still be entitled to transitional benefits for up to 36 months.

Are former spouses entitled to medical, dental, commissary, and exchange benefits under this legislation? – Yes; while receiving payments under this legislation, the former spouse is also entitled to medical, dental, commissary, exchange, and all other benefits similarly received by a spouse or dependent of a retired member.

For more information see:

<http://www.mass.gov/legis/laws/mgl/gl-208-toc.htm>;

<http://www.divorcelawinfo.com/states/ma/massachusetts.htm>

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